

Comments of the Massachusetts Department of Public Utilities

October 27, 2011

Comment Period Opens

Proposed Amendments to NERC Rules of Procedure Section 509, Section 1703 and Appendix 5C

Comment Period Ends October 27, 2011

The North American Electric Reliability Corporation (NERC) is proposing changes to its Rules of Procedure (ROP) and associated Appendices.

NERC is requesting comments on a proposed revision to the NERC Rules of Procedure to add new sections 509 and 1703, as well as, Appendix 5C: *Procedure For Requesting and Receiving An Exception From The Application Of The NERC Definition of Bulk Electric System*. The comment period begins September 13, 2011 and ends October 27, 2011.

The proposed revisions are in response to FERC Orders 743 and 743A where NERC was directed to revise the definition of the Bulk Electric System (BES) and to develop a proposed exemption process. The proposed amendments would effectuate the exemption process directive by creating a new ERO rule implementing an exceptions process.

Under this process entities would be allowed to pursue either including within the BES an Element or Elements that would otherwise be excluded by application of the BES Definition or excluding from the BES an Element or Elements that would otherwise be included by application of the BES Definition. This exception process was developed with the participation of interested stakeholders who believe it to be practical in application and less burdensome than the NOPR proposal where a Regional Entity would have sought ERO and Commission approval before exempting each facility rated at 100kV or above from compliance with the Reliability Standards.

Materials Included in this Request for Comments

- Proposed new Section 509: Exceptions to the Definition of the Bulk Electric System
- Proposed new Section 1703: Challenges to NERC Determinations of BES Exception Requests under ROP Section 509
- Proposed new Appendix 5C: *Procedure for Requesting and Receiving An Exception From the Application of The NERC Definition of Bulk Electric System* (clean and redline showing changes from the May 2011 posting)

Additional Materials Included for information

- Consideration of comments from May 2011 posting
- BES Exception Request flowchart and timelines
- Exception Request Form template

Submission of Comments

Comments are due **October 27, 2011**, and must be submitted electronically using the form provided.

1. The ROP team believes the proposed amendments represent a process that balances the need for effective and efficient reliability administration with due process and clarity of expectations. Do you agree? **Please comment why or why not...If not please offer your proposed revision.**

☐ Yes

☒ No

☒ **Comments:** The Massachusetts Department of Public Utilities ("MA DPU") appreciates the opportunity to provide comments on the proposed changes to NERC's Rules of Procedure ("ROP" or "Rules"). Massachusetts is the largest state by population and load in New England. It comprises 46% of both the region's population and electricity consumption. Generating plants located in Massachusetts represent 42% of New England's capacity and our capitol city, Boston, is the largest load center in the region. The MA DPU supports the comments filed today by the New England States Committee on Electricity ("NESCOE") and underscores those comments in this filing.

While the drafting team made a number of improvements, the proposed Rules create a burdensome and redundant process that is likely to consume both time and resources in quasi-judicial proceedings. For example, there does not appear to be any need for substantive reviews of exceptions at both the Regional Entity and at NERC. If the technical review process at the Regional Entity level is sufficiently open, and if all parties (including the relevant state regulators) do not object to the Regional Entity's recommendation, there is no purpose served by having NERC conduct a second review. NERC should weigh in only when a stakeholder (including a state regulator) objects to the Regional Entity's determination. Similarly, two levels of appeals at NERC may not be necessary as currently proposed in Section 1703 of the ROP. Instead, the exceptions process should allow for thorough consideration at the Regional Entity level and prompt disposition of objections at NERC.

The proposed re-certification process also adds layers of review that are unnecessary. NERC should rely on the reliability planning processes that FERC has established to raise issues in the future emerging from changing conditions.

The Rules, as proposed, could also lead to unnecessary costs being passed to consumers if Owners are forced to incur significant compliance expenditures before all objections to the inclusion of a facility in the Bulk Electric System ("BES") are finally addressed. When there is no such objection pending, it is fair to require the responsible entity to develop and comply with an implementation schedule. Similarly, if the result of the Regional Entity's review is the *inclusion* of a facility in the BES, it is reasonable to require the development of such a schedule. However, when the Owner or an interested party seeks NERC's review of the classification, the Owner should not be faced with compliance expenditures and potential penalties until after NERC has made its final decision on the status of the facility. The MA DPU understands that there may be circumstances in which a delay in implementation creates system risk; the ROP could address this possibility by requiring an Owner to proceed on the submitted schedule when necessary to alleviate a threat to the transmission system. Section 10.1 should be clarified to provide that, except in those circumstances, an Owner will not be required to implement the proposed schedule so long as an objection to the inclusion is pending. Similarly, when a request for an *exclusion*

has not yet been finally determined, NERC should not enforce implementation requirements (see section 10.2(a)).

The MA DPU also believes that the process described in the draft falls short because it does not provide a sufficient role for state regulators. In the comments submitted in response to question 5, below, the MA DPU offers some specific suggestions for improving this aspect of the process.

2. The ROP team believes the proposed amendments represent a process that is consistent, repeatable, and verifiable. Do you agree? **Please comment why or why not...If not, please offer your proposed revision.**
 - ☐ Yes
 - ☐ No
 - ☐ **Comments:**

3. The ROP team believes the proposed amendments represent a process that supports consistent treatment of transmission lines that cross international borders. Do you agree? **Please comment Please comment why or why not...If not, please offer your proposed revision.**
 - ☐ Yes
 - ☐ No
 - ☐ **Comments:**

4. The ROP team believes the proposed amendments represent a process that helps alleviate concerns about a “one-size fits all” approach. Do you agree? **Please comment why or why not...If not, please offer your proposed revision.**
 - ☐ Yes
 - ☒ **No**
 - ☒ **Comments:** The MA DPU appreciates the drafting team’s efforts to create a flexible and open review process. However, in at least one respect, the proposed Rules might unnecessarily hamstring the decision-maker, whether it is the Regional Entity or NERC. Specifically, Section 3.2 suggests that the Regional Entity would not be allowed to base a decision on a single piece of evidence even in the case where that evidence was overwhelmingly persuasive. The decision-maker should be allowed to review all the potentially meaningful information but should not be required to search the record for additional supporting facts when there is a dispositive fact or data set. The MA DPU suggests deleting the last sentence of section 3.2.

5. The ROP team believes the proposed amendments represent a process that allowed commenters to raise and address a number of their substantive concerns. Do you agree? **Please comment Please comment why or why not...If not, please offer your proposed revision.**
 - ☐ Yes
 - ☒ **No**
 - ☒ **Comments:** The MA DPU is concerned that the proposed Rules continues to exclude states from an opportunity to participate meaningfully in the exception process. Without state participation, the

process will not address the full range of substantive concerns that may arise in any given case, and NERC will not have the benefit of the states' views.

In its comments on the last posting of the ROP draft, NESCOE requested that states, at minimum, be provided (i) notice of an exception request, (ii) notice of the applicable Regional Entity's recommendation regarding such request, and (iii) an opportunity to review the exception related information and to submit comments to the Regional Entity during its review and, later, to NERC following the Regional Entity's recommendation. NESCOE additionally supported a more active role for ISO/RTOs, including timely notice of an exception request and the opportunity to express concerns about, or provide support for, such request. The MA DPU supported these requests.

However, while the revised Rules now provide a greater role to planning authorities and other entities, states still do not have a role in the consideration of proposed exceptions. Following the comment period on the last posting of the ROP, the NERC BES Rules of Procedure Team ("ROP Team") determined: "Each of the BA, TOP, RC, TP, and PC that has (or will have upon inclusion in the BES) the elements covered by an Exception Request within its scope of responsibility shall be simultaneously provided Section 4.5.1 and 4.5.2 information by the Submitting Entity at the time it makes the Request so that such entities will have the opportunity to be aware of an Exception Request. The team believes that other parties/entities, *including relevant regulatory authorities within their jurisdiction*, can express their concern(s) or endorsement(s) to any or all of the entities listed above." "Consideration of Comments on the NERC ROP Appendix 5C BES Exception Process — Project 2017-10" at Response #6 (emphasis added), *available at* http://www.nerc.com/docs/standards/sar/Project_2010-17_BES_ROP_Consideration_of_Comments.pdf.

This response overlooks the obvious. State regulatory authorities must *first* be made aware of the exception request before they can determine whether and to what extent to express concern or support a request. However, the Rules do not include any mechanism that would facilitate states' participation. This gap can be fixed by amending the Rules to ensure that relevant state regulatory authorities receive the same notice and access to information as Planning Authorities and other entities are provided in Sections 4.5.1 and 4.5.2. States should also have the same right to provide comment and input to the Regional Entity as those other entities have under section 5.4. Additionally, relevant states should be provided notice of a Regional Entity's recommendation pursuant to 5.2.3 and an opportunity to submit comments to NERC under section 8.0. States should also have the right to appeal a NERC determination under proposed rule 1703.

The MA DPU is also concerned that the draft Rules continue to lack a mechanism for state regulatory authorities to obtain review of the status of an element. As a general matter, the MA DPU agrees with NESCOE that state personnel with CEII clearance should have access to the current list of elements classified as BES. However, even equipped with such information, states are not in a position to submit an exception request because they lack the information required for submission under the ROP. To ensure meaningful state participation, the ROP Team should incorporate into the Rules the following framework:

(i) Upon request from a state, the Regional Entity should be required to undertake a review of the element or elements in question. If the Regional Entity determines that the classification is in error, the Regional Entity shall submit an exception request to NERC.

(ii) States should be afforded an opportunity to file an appeal directly with NERC if the Regional Entity declines to file the exception request, or to seek NERC's review of the Regional Entity's classification of the element or elements in question.

The amendments to the ROP improve the Rules by allowing Planning Authorities and other entities the limited ability to submit a request for inclusion of facilities in the BES. The MA DPU believes Planning Authorities should not be limited to initiating review of inclusions but should also be permitted to propose a possible exclusion.

6. Do you have any other comments not covered above?

☐ **Comments:**